NO. 81-6437

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

JIMMY LEE SMITH,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

REPLY BRIEF

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

QUESTION	PAGE(S)
THE FLORIDA SUPREME COURT'S AFFIRMANCE OF PETITIONER'S CONVICTION AND DEATH SENTENCE, IN WHICH IT APPROVED A PRACTICE WHEREIN THE TRIAL COURT SPECIFICALLY ADVISED THE JURY THAT HE HAD FOUND PETITIONER'S CONFESSION TO BE VOLUNTARY, LEFT UNREDRESSED A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS, AND ESTABLISHED PRECEDENT WHICH WILL PERMIT AND PERHAPS ENCOURAGE SUCH CONSTITUTIONALLY IMPROPER DISCLOSURE IN SUBSEQUENT CRIMINAL TRIALS.	1

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REASONS FOR GRANTING WRIT

QUESTION PRESENTED

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In its response to the petition for writ of certiorari in this case, the state contended that the decision of the Eighth Circuit Court of Appeals in United States v. Bear Killer, 534 F.2d 1253 (8th Cir. 1976) is "erroneous" (response, p. 3, lines 20-21), and that it "erroneously overlooked" this Court's decision in Pinto v. Pierce, 389 U.S. 31 (1967) (response, p. 3, lines 29-32). Petitioner of course disagrees with the state's contention that Bear Killer was wrongly decided, since, as correctly noted by the state, petitioner is relying heavily on that case in seeking certiorari.

It is not altogether clear whether the state is arguing that Bear Killer was incorrect in holding that the trial court's finding of voluntariness should not be disclosed to the jury [see petition for writ of certiorari, p. 5-6, citing decisions of the Second, Fourth, Fifth, Ninth and District of Columbia Circuits, as well as several state appellate courts, which indicate agreement with Bear Killer on this point], or whether the state is simply arguing that Bear Killer was inccrrect in discerning a constitutional basis for its holding, or both. Since the state insists that Bear Killer was based solely on federal statute (response, p. 3, lines 6-15), notwithstanding the clear language in that opinion to the contrary (see United States v. Bear Killer, supra, at 1259; petition for writ of certiorari, p. 7-8), it appears that the state's position is that disclosure of the court's finding of voluntariness is permissible under Pinto v. Pierce, supra; that the Florida Supreme Court correctly

so held in the present case; and that petitioner and the Eighth Circuit in Bear Killer are wrong. (See response, p. 3-5).

Supreme Court rule 17.1(b) indicates that one of the prime reasons for this Court to consider granting certiorari is conflict between a state court of last resort and a federal court of appeals on a federal question. The state's Response clearly demonstrates the existence of such conflict in the instant capital case.

CONCLUSION

WHEREFORE, the petition for writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petition for Writ of Certiorari to the Supreme Court of Florida has been furnished by U.S. mail to the Honorable Alexander L. Stevas,, Clerk of the United States Supreme Court, First and Maryland Avenue, Northeast, Washington, D.C. 20543; Mr. Jimmy Lee Smith, #035167, Post Office Box 747, Starke, Florida 32091; and by hand-delivery to the Honorable Sid White, Clerk of the Supreme Court of Florida; Supreme Court Building, Tallahassee, Florida; and the Honorable Jim Smith, Attorney General, The Capitol, Tallahassee, Florida; on this 30th day of April, 1982.

STEVEN L. BOLOTIN